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Panel Handout: Brown University Redux - Supplemental Decision by NLRB Regional Director

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK¹
Employer

and

Case 02-RC-143012

GRADUATE WORKERS OF
COLUMBIA-GWC, UAW
Petitioner

SUPPLEMENTAL DECISION AND ORDER DISMISSING PETITION

Columbia University (the Employer) is a New York corporation which operates a private university in New York, NY. On December 17, 2014, Graduate Workers of Columbia-GWU, UAW (the Petitioner) filed the petition in this matter seeking a unit of students who provide teaching and research-related services to Columbia University. The unit sought by the Petitioner, as amended,² is as follows:³

Included: All student employees who provide instructional services, including graduate and undergraduate Teaching Assistants (Teaching Assistants, Teaching Fellows, Preceptors, Course Assistants, Readers and Graders): All Graduate Research Assistants (including those compensated through Training Grants) and All Departmental Research Assistants employed by the Employer at all of its facilities, including Morningside Heights, Health Sciences, Lamont-Doherty and Nevis facilities.

Excluded: All other employees, guards and supervisors as defined in the Act.

On February 6, 2015, I administratively dismissed the petition, finding that it sought an election among graduate students who are not employees within the meaning of Section 2(3) of the Act pursuant to the Board's decision in *Brown University*, 342 NLRB 483 (2004). On March 13, 2015, the Board granted the Petitioner's request for review and remanded the case for hearing.

Upon the petition duly filed under Section 9(c) of the National Labor Relations Act (the Act), a hearing was held before a Hearing Officer of the National Labor Relations Board (the Board) on March 31, April 2, 9, 22, 24, 27, 28, May 12, 13, 21, 27, and June 8, 2015.

¹ The name of the employer appears as amended at hearing.

² In a Stipulation received into the record as Joint Exhibit 11, Petitioner moved to amend the petition to delete three classifications (Law Associate, Instructor, and Listening Assistant) and the Employer stated that it has no objection to the deletions. I hereby grant the amendment.

³ The Petitioner desires to proceed to an election in another unit if one is found appropriate by the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record in this proceeding, including the briefs filed by the parties after the closing of the record, I find that:

1. The Hearing Officer's rulings are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that The Trustees of Columbia University in the City of New York, a New York corporation with a place of business located in New York, New York, operates a private university. Annually, in the course and conduct of its operations, the Employer derives gross revenues in excess of one million dollars, and purchases and receives at its New York, New York facility goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of New York.
3. The labor organization status of the Petitioner is in issue. The Employer contends that the petition should be dismissed because Graduate Workers of Columbia-GWC, UAW is not a labor organization within the meaning of the Act because it does not, and will not, deal with Columbia University or any other employer. The Employer argues that potential voters could be misled about what entity would represent them in bargaining if Petitioner prevailed in an election.

Petitioner presented Kenneth Lang, International Representative of the UAW, to testify with respect to labor organization status. Lang signed the Petition as International Representative of the UAW and lead organizer of the employees in the classifications sought by the petition. Lang testified that Petitioner has been recognized as an organizing committee by the UAW. In the fall of 2013, students working in instructional and research-related positions at Columbia University began meeting with the UAW to discuss forming a union and bargaining collectively.

Employees in the proposed unit classifications signed authorization cards which read, in part:

I hereby join with my co-workers to improve our wages, our working conditions and our lives. I authorize the Graduate Workers of Columbia University and United Automobile, Aerospace and Agricultural Implement Workers of America (GWC-UAW) to represent me for the purposes of collective bargaining with my employer over wages, benefits, working conditions and other terms and conditions of employment.

The cards include a logo which incorporates, "UAW Local 2110" as part of its design, along with "Columbia University" and "Graduate Workers of Columbia University." The cards encourage readers to visit a web site identified as belonging to Local 2110 by virtue of that organization's name being prominently displayed on the initial page of the site and listed as the contact for the site under the designation, "GWC-UAW Local 2110." Additionally, Lang testified that in accordance with the UAW constitution, graduate student employees involved in the GWC-UAW organizing campaign would participate in negotiations with the Employer.

The Employer notes that the UAW Constitution, Art. 36 §15, states that subordinate bodies of the International Union have no autonomy under the Constitution but exist upon the authority of and are supervised by and responsible to the International Executive Board. Lang testified that the International Union supervises organizing campaigns, and that organizing committees are then absorbed by a local union. He explained that certification would result in joint representation by the International, the Local, and the GWC, which would be a unit within Local 2110. GWC does not have its own constitution or bylaws. Local 2110 has bylaws consistent with the UAW's international constitution.

Based on the evidence presented at the hearing, I find that the Petitioner is a labor organization within the meaning of the Act.

Section 2(5) of the Act defines a "labor organization" as:

Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The statutory definition of a "labor organization" has long been interpreted broadly. *See Electromation, Inc.*, 309 NLRB 990, 993-994 (1992), *enf'd.* 35 F.3d 1148 (7th Cir. 1994). For a union to fall within the definition of a "labor organization," the Board has held that employees must participate in the union and it must exist for the purpose, in whole or in part, of dealing with employers on their behalf regarding their wages, hours of employment and other terms and conditions of employment. *See Alto Plastic Mfg. Corp.*, 136 NLRB 850, 851-852 (1962).

While it is true, as the Employer notes, that the Board has dismissed petitions in the past which list organizing committees as the petitioner, the cases referenced by the Employer all arose out of situations unlike that at issue here. In particular, the instant petition is unlike that dismissed by the Board in *Sterling Processing Corp.*, 119 NLRB 1783 (1958), in that the petitioner in *Sterling* was a joint organizing committee formed by two separate unions. As such, it would not operate under the auspices of a single set of rules and voters could potentially be misled regarding, for instance, what constitution would govern them as future members of a bargaining unit. Here, the organizing committee is clearly a part of the UAW, an entity governed by a Constitution and which indisputably exists to represent employees for the purpose of negotiating their wages, hours, and working conditions with their employers. That the International is expected to assign bargaining to a particular local (in this case a local prominently referenced throughout the organizing campaign) is an internal Union matter outside the purview of the Board. *Gemex Corporation*, 120 NLRB 46 (1958).

4. A question affecting commerce exists concerning the representation of certain employees of Columbia University within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit of students who assist faculty with teaching, research, and other miscellaneous duties. The Petitioner argues that an election should be directed because *Brown* was wrongly decided and should be overturned, and that the individuals in the petitioned-for classifications are employees.

Columbia University argues that the petition should be dismissed because the students holding positions included in the petitioned-for unit are not employees within the meaning of §2(3) of the National Labor Relations Act, as amended (“the Act”). Columbia University asserts that the determination of the Board in *Brown* is controlling with respect to these individuals and that thus, as students enrolled at Columbia University, they cannot be found to be employees of that institution. The University argues additionally that even if graduate students could be found to be employees as a general matter, certain of the positions included in the petitioned-for unit should be excluded because the positions are occupied on a temporary or casual basis or because they otherwise lack a community of interest with the majority of positions included in the unit.

I have considered the arguments presented by the parties. I conclude that I am constrained by *Brown*, which holds that graduate assistants are not “employees” within the meaning of Section 2(3) of the Act. Because the Petitioner seeks to represent individuals employed in classifications which fall within the term, “graduate assistants,” *Brown* is controlling, and therefore I am dismissing the petition.

I. OVERVIEW

A. Graduate Studies at Columbia University

Columbia University is an institution of higher learning with a principal campus in the Morningside Heights neighborhood of New York City. The University also has a separate Health Sciences campus, and separate research facilities elsewhere in New York State.

The University’s extensive academic offerings include programs in the Arts and Sciences, the Health Sciences, and several professional schools. The various departments within the schools that comprise Columbia University offer 520 degree programs, including 61 Ph.D. programs and about 225 master’s degree programs. A total of about 29,000 students are enrolled at Columbia University.

1. The Graduate School of Arts and Sciences

The Graduate School of Arts and Sciences (GSAS) determines and administers policy for twenty-eight departments within the broad categories of the humanities, social sciences, and natural sciences. GSAS awards all doctoral and master’s degrees in these departments, as well as the degrees earned in professional schools.⁴

⁴ The professional schools include the Graduate School of Business, the Fu Foundation School of Engineering and Applied Science, the School of Journalism, the School of Law, the School of Architecture, Planning and Preservation, the School of Social Work, and the School of International and Public Affairs (“SIPA”).

GSAS determines the number of applicants who may be offered admission to graduate programs each year. Faculty in each department determine which applicants will be admitted, and the GSAS issues the letters offering admission along with offers of financial support.

Applicants are considered based on prior academic performance, demonstrated through their transcripts, their statement of academic purpose, a CV or resume, letters of recommendation, GRE scores, and a writing sample. There is no consideration of teaching experience or other work history. Human Resources is not involved in evaluating applications.

2. Master's Degree Programs

“Terminal” master’s degrees are conferred after completion of all academic requirements in a particular program. Most programs take one to two years of study, sometimes including instructional or research requirements in addition to coursework. About 1,400 students are enrolled in programs which award a Master’s as a terminal degree.

3. Ph.D. Programs

Doctoral candidates begin their studies with two or three years of coursework, after which they take a comprehensive test. They must then propose and defend a doctoral thesis. The GSAS requires that all doctoral students in the Arts and Sciences be enrolled full-time and fulfill a one-year teaching requirement, over two consecutive semesters. As a general rule, students must complete this initial phase of work within eight semesters of registration. Once doctoral students have fulfilled all requirements for a doctorate, except the dissertation, they are awarded the Master of Philosophy (M.Phil.) degree and begin work on a final research project, typically resulting in a dissertation.

Students work with sponsoring faculty members who serve as the principal supervisor of their research or other dissertation work. The nature of this collaboration varies based on the discipline. In the humanities and social sciences, the dissertation project is developed in consultation with a sponsoring faculty member who supervises the progress. In the natural sciences, students choose a particular laboratory to work in based on interests, and develop an original research project within that lab. Music students produce a musical composition with the guidance of a faculty member.⁵ Dissertations must be defended in front of a five-member faculty committee which is designated by the GSAS. The Ph.D. is conferred upon approval of the dissertation.

The typical time from the start to completion of a doctoral program varies by subject area. In the humanities, students may spend eight or nine years, in social sciences six or seven years, and in natural sciences five or six years of study. The Executive Committee of the GSAS has set an outside limit of nine years for Ph.D. students to complete their requirements.

⁵ Music composition students are awarded the Doctor of Musical Arts degree as the equivalent of a PhD.

Individual Departments may impose requirements over and above those set by the GSAS, including additional teaching requirements of up to three years out of five. Students receiving multi-year fellowships typically must teach for two or more years as a condition of their fellowship support, per their official letter of admission. Students must be continuously registered on a full-time basis to remain in a Ph.D. program.

Students may be put on probation or prevented from graduating, if they do not make satisfactory academic progress as determined by the student's department. Maintenance of good academic standing includes acquisition of an advisor, meeting "time-to-degree" requirements for the M.A. and M.Phil. degrees, fulfilling the dissertation prospectus requirement where applicable, completing degree requirements at a superior level of quality, maintaining a cumulative GPA of at least 3.0, fulfilling pedagogical requirements, and meeting all other criteria specified by the department.

B. Financial Support for Columbia University Students

Many of the positions included in the petitioned-for unit are held by doctoral students performing research or teaching duties in accord with a standard five-year funding package awarded to them upon admission. All students admitted to doctoral programs in the Humanities and Social Sciences receive the same funding, and a similar package is offered to all those in the Natural Sciences. For each year, the package includes full tuition, health insurance, University facilities fees, and a stipend for living expenses. The Fellowship amounts are determined annually by the GSAS based on an understanding of the overall school budget and with the goal of maintaining competitive with peer schools. The market value of teaching services which students will provide is not considered in calculating what the stipend amount will be.

All enrolled Ph.D. students receive the same funding each academic year. A third-year doctoral candidate receives the same total package as a first- or fifth-year student in the same field. However, the funding streams and manner of payment of the stipend portion of the package varies during periods that the student is performing teaching or research responsibilities, as described below.

During their first year, all doctoral students are supported financially as "Dean's Fellows." For students in the Humanities and Social Sciences, the Dean's Fellowship entails no service obligations beyond satisfactory progress in study and research. In some natural sciences departments, students on a Dean's Fellowship may be required to fulfill teaching or research obligation in the first year. In the second through fourth years of doctoral study, students assume teaching or research responsibilities as part of the funding package. In their fifth year, all students are fully supported by a "Dissertation Fellowship" which does not require teaching or research responsibilities.

After the five years of guaranteed funding, GSAS allows departments to offer students teaching positions as long as the department can prove they have instructional needs that would be covered by offering those teaching positions. Students appointed to teach in years beyond their fifth receive the same stipend, tuition, and fees package as those in years one through five.

Specifics of doctoral funding packages vary slightly between areas of study. Currently, the funding package for a doctoral student in the Natural Sciences includes full tuition, including the Health Services and University Facilities fees, a stipend of \$26,286, during the academic year, a summer stipend of \$3,376, health insurance premium payments, and a one-time relocation payment of \$3,000. Each semester, the student receives half of the total annual stipend. During the terms that students hold appointments as Instructional Officers, they are paid one-third of their stipend as salary. This amount is paid through a payroll account subject to W-2 reporting and I-9 employment verification via I-9 forms.

Funding packages for graduate students who perform research are sometimes paid for in whole or in part by an outside grant. Some federal agency grants cover the full stipend for graduate students and some of the tuition costs. However, in many circumstances, outside grant funds fall short of the standard GSAS fellowship package. In those cases, GSAS supplements the award in order to have all students have the same funding package.⁶ The record does not indicate whether students in any of the research positions are paid out of payroll accounts and thus subject to W-2 reporting and I-9 employment verification via I-9 form.

Columbia University provides very little financial aid for terminal masters degree students. Some are appointed as Readers, though currently referred to as Graders. They receive a combination of tuition remission and a stipend, totaling \$3,000, or so, out of a tuition rate close to \$50,000.

Teaching Assistant IIIs are paid \$1,800 per semester. Master's students are paid a tuition rebate of \$1,800 per semester of instructional duties and the same \$1,800 paid to Teaching Assistant IIIs. All officers, including Master's Teaching Assistants, Teaching Fellows, and Preceptors, are paid bimonthly.

Students at Columbia University may also be paid varying amounts for work that is not related to instruction or research. The student casual payroll is designed for short-term payments to students for work, such as, shelving books in the library or assisting with communications or promotions for public programs at the school. It appears that some schools systematize the casual payroll and others do not. The record reflects that Course Assistants may be paid out of a casual payroll. There is also a separate payroll for work-study students, who are paid out of funds from the federal government. These are almost entirely office assistants doing basic office work, such as filing and copying.

⁶ Medical plans and facilities fees cannot be charged to grants.

In the case of a student receiving an external fellowship at any point in her studies, funding packages may be reduced by the amount of the fellowship and teaching responsibilities will be adjusted in accord with requirements of the outside fellowship (for example, if a fellowship requires that a student not be teaching during the term of fellowship support). Students also have the option to "bank" their guaranteed support and extend it beyond their fifth year if they receive outside support. Students could take a fellowship from outside and not have teaching obligations in their third year, or they could decide instead to teach, receive a supplement to the outside fellowship, and bank the opportunity to remain enrolled for a year beyond the standard five without a teaching obligation.

C. The Core Curriculum

A significant number of graduate students serving in positions included in the petitioned-for unit have instructional roles in courses which are part of Columbia College's Core Curriculum. The Core Curriculum is a set of requirements which must be completed by all undergraduates at Columbia College, including five required classes, a language requirement (either demonstrated proficiency or completion of classes), and a research writing project. Among the required classes are *Literature of Humanities* and *Contemporary Civilization*, each of which extends over a full year. The other three -- *Frontiers of Science*, *Art Humanities*, and *Music Humanities* -- are one-semester courses. All Core classes are mandatory for all Columbia College undergraduates, and half are required for students in the School of Engineering. Students in the School of General Studies are permitted, but not required, to take the classes. As will be discussed below, graduate students serve in instructional positions in all the Core classes, except for *Frontiers of Science*.

Literature of Humanities and *Contemporary Civilization* each meet twice per week for two hours at a time. The same instructor teaches over the course of the full year. Both courses are discussion-based and have an inter-disciplinary staff. *Literature of Humanities* is a "great books" course -- works of major cultural significance in the history of western literature, beginning with Homer and proceeding chronologically. *Contemporary Civilizations* focuses on works in the history of moral and political thought. Faculty are drawn from all departments of Arts and Sciences and include retired faculty, senior tenured faculty, junior untenured faculty, post-doctoral fellows, adjunct faculty and graduate students. Students register for specific sections of each of these classes, but do not know the name of the instructor at the time of registration. Staffing for the semester-long classes is done within the Art History, Music Humanities, and Science departments, respectively.

D. General Descriptions of Petitioned-for Classifications

All of the titles included in the petitioned-for unit, except for Course Assistant, are titles given to "Student Officers" who are appointed to positions as either Instructional Officers or Research Officers for one or more terms. Students can hold only one appointment at a time. They must be currently enrolled at Columbia University to receive an appointment.

Departments decide which students will hold departmental appointments and they forward their selections to various administrative offices for approval. The administrative offices review the list of students recommended for appointments to confirm that they are currently enrolled and that the level of compensation is consistent within classifications in a given department. They also review each student's total appointments to ensure that their total hourly commitments are within a range that will not interfere with their studies. After this review, the administrative offices forward the information to Human Resources where it is entered into the Employer's peoplesoft system. Human Resources does not play a role in selection or approval of students for appointments.

Although they receive appointments, Student Officers are not considered “Officers of the University” – a title encompassing every faculty member, officer of research, officer of the library, and officer of administration. The title indicates that the holder has been formally appointed by the Secretary of the University. Officers are paid bimonthly; support staff are paid weekly. Officers are “exempt” and ineligible for overtime payments. There are different fringe benefits applicable to officers and non-officers. Some policies, including the fraternization policy, apply to all instructional officers, including student officers.

1. Instructional Officers

Instructional Officers are appointed as Preceptors, Teaching Fellows, Teaching Assistants, Teaching Assistant IIIs, and Readers (also sometimes referred to as “Graders”). Instructional appointments are usually for one or two semesters at a time. A few appointments are made for the summer term.⁷ Students do not receive academic credit for their teaching responsibilities. In the vast majority of doctoral programs, students serve in an instructional position at some point prior to receiving their Ph.D.s. Of the 1302 students who received Ph.D.s at Columbia University over the last three years, only 178 did so without holding at least one instructional position. Of these, the vast majority were concentrated in the Biomedical School (117) and most of the remaining were in Engineering (32) or Public Health (17).

Satisfactory teaching performance is determined by faculty members who visit classes and review evaluations from students in the Teaching Fellow’s class. If a student instructor is performing poorly he will be given additional training to improve; in extreme situations a department might relieve the graduate student of teaching responsibilities. There is no University-wide evaluation procedure for student instructors, but some departments may conduct informal reviews.

Doctoral students are restricted to working a maximum of twenty hours per week at duties of an appointed instructional position, or combinations of instructional positions, regardless of their fellowship category. This is a restriction on responsibilities having to do with appointments – it is not relevant to outside employment.

Training for Student Instructors

There is no single training mandatory for every student who teaches at Columbia University, but there is significant pedagogical training and assistance provided to graduate students by the Graduate School of Arts and Sciences’ Teaching Center. The Teaching Center provides written materials about teaching and hosts separate one-day orientations for first-time Teaching Fellows in the Social Sciences and Humanities and in the Natural Sciences. During the orientation students are introduced to campus resources and policies. They are also briefed on active learning principles and provided with ideas for activities to employ during their first week of teaching.

⁷ Summer sessions are offered only by the School of Continuing Education.

Within each department, the Director of Graduate Student Teaching is responsible for training and advising Teaching Fellows. Many departments provide particularized training for Fellows or Assistants serving in their department. For instance, all first-semester math doctoral students must take a weekly course called, “The Teaching of Mathematics,” in which the students are taught the technical aspects of being an instructor, including preparing and presenting a lecture and a syllabus. Class instructors further train and guide Teaching Fellows in how to write and grade exams and homework.

Teaching Assistant IIIs

Teaching Assistant IIIs are undergraduates, mostly in the arts and sciences. They run labs or problem sections that are ancillary to very large classes within the School of General Studies and Columbia College, usually in math, computer science, or the natural sciences. They may grade homework but not exams. Teaching Assistant IIIs are appointed for two semesters, with compensation of \$1,800 per semester; they do not receive any tuition rebates.

Readers

Readers are Master’s degree students who are appointed specifically to grade papers and exams of undergraduate students, under the direction and supervision of an officer of higher rank. “Grader” is not an appointed position, although it seems that title is sometimes used informally to refer to Readers.⁸

Teaching Fellows and Teaching Assistants

The Teaching Fellow title is used for doctoral students in the Graduate School of Arts and Sciences. Students who perform similar functions in other parts of the University are usually designated as Teaching Assistants. Teaching Fellows and Teaching Assistants perform a variety of instructional duties which vary based on the classes in which they are appointed as well as their experience and educational level. Some appointments seem to primarily consist of grading assignments or holding office hours. Others involve independently teaching courses, such as introductory language courses, or leading discussion sections. Teaching Fellows and Assistants are expected to commit 15-20 hours per week on average to their teaching and related duties.

Some Teaching Assistants are Master’s students. Usually Master’s students do not teach sections of classes on their own, but lead discussions or laboratory sessions related to courses offered by an officer of higher rank. They may also grade written work.

Teaching Assistants and Fellows must attend all lectures for the classes in which they are assisting. They must be in good academic standing and have appropriate mastery of their discipline as determined by their department. Although usually they assist in classes within their field, this is not always the case.

⁸ There are also some students who are paid out of “casual payroll,” as temps, to grade problem sets, and it appears they are sometimes referred to as Graders, although they are not in appointed positions.

The record includes numerous examples of the varied duties of Teaching Assistants and Teaching Fellows. In the Math Department, Teaching Fellows serve weekly hours in the “math help room” for undergraduates, teach limited-enrollment sections of Calculus I and II, grade homework, make and grade exams, and hold office hours. Other Fellows provide instruction to undergraduates in the University Writing Program and in foreign languages (all Columbia College students must participate in the Writing Program, and all must either demonstrate competence equivalent to two years of studies in a foreign language or pass two years of classes in a language). Additional examples are described below in the review of specific schools.

Some doctoral students serve as instructors in the summer session, during which regular undergraduate classes are taught at an accelerated pace. In the summer session, Teaching Fellows may teach more advanced classes than they do during the regular school year, since there are fewer regular faculty teaching. They are supervised by the Director for the Summer Session, and sometimes also by senior faculty in their particular field. PhD candidates who teach summer classes are compensated from the School of Continuing Education in addition to their GSAS funding package. It appears that other summer instructors are compensated in the same manner as graduate student instructors.

Undergraduates complete evaluation forms at the end of each class for all instructors, including full-time faculty, Teaching Assistants and Fellows. Evaluation results are available to all directors of graduate studies and anyone supervising the teaching of graduate students in a department. The lead faculty member in charge of each course also schedules observations of the class, and discusses the observations with the student afterwards. With the limited exception of students teaching in the Teaching Scholars Program, described below, Teaching Fellows work with faculty supervision. Faculty evaluate Teaching Fellows in their courses via an online form and there appears to be a particular supervising faculty member who evaluates the teaching of each Fellow.

Preceptors

Only students who have completed all the doctoral requirements, except for their dissertation, may be appointed as Preceptors. The duties of Preceptors vary by course of study, but as a general matter, they operate fairly independently, often running their own classes of approximately 20 students.

Students are eligible to hold Preceptor positions during the sixth year of a doctoral program, and they may be reappointed in their seventh year. They also must be eligible for GSAS funding, which expires in the seventh year. Thus, students rarely serve as Preceptors for more than two years. In limited circumstances, some students may serve as Preceptors in their fifth year, for a total of three years.

It appears that various schools and departments may appoint students to the position of Preceptor. However, the only detailed description of the Preceptor position is for those graduate students appointed to teach the Core classes of Contemporary Civilizations and Literature of Humanities. Each of these classes has about 60 sections, of which at most 24 will be taught by Preceptors, of which about 12 are in their first year of Preceptorship. Currently, there are 17

Preceptors teaching Contemporary Civilizations and 19 teaching Literature of Humanities. Each Preceptor teaches only one section of a course. It is generally presumed that a first-year Preceptor will continue in the position for a second year. No evidence was proffered of any Preceptors ever having been refused renewal for performance reasons.

Graduate students seeking Preceptorships must submit a cover letter summarizing prior teaching experience and familiarity with the pedagogical goals of the Core Curriculum, their CV, student evaluations, and statistical summaries for courses previously taught. Fewer than half of those who apply are selected.

Once appointed, Preceptors attend extensive orientation programs, including a two-day workshop on how to teach the texts. First-year Preceptors take a weekly, credited (but not graded) seminar about the course they are teaching which includes substantive discussion of the books being taught as well as practicalities of teaching and assessing students. They also attend a weekly lecture (optional for other instructors) by an expert on the subject matter to be taught the following week. The faculty member leading each course meets with first-year Preceptors to give them feedback.

The Preceptors' essential duties are to teach the assigned course. In addition to their time in the classroom, they hold office hours and attend twice-weekly meetings. They also design and grade all exams and other assignments in their classes, and assign final grades for their students.⁹

Preceptors teaching the two year-long Core classes receive a \$1,000 stipend and summer support of \$3,200 per year over and above the standard GSAS funding package.

Additional Instructional Positions

In addition to the positions described above, graduate students at Columbia University may hold fellowships in several special teaching-related programs. These include the Lead Teaching Fellow Language Program, the Teagle Fellows Program, and the Teaching Scholars Program.

The Lead Teaching Fellow Language Program, administered by the GSAS Teaching Center, provides stipends for graduate students to produce teaching-related events in their home departments. Last year, 27 students held Lead Teaching Fellowships spanning over twenty departments. One Fellowship per department was funded by GSAS, and in a few departments, a second was funded out of the department's budget. Lead Teaching Fellows are paid an extra \$1,000 per semester.

The Teagle Fellows Program funds a stipend for select graduate students who have completed all activities in a Teaching Center summer program on technology in the classroom. These Fellowships are for a full academic year. Teagle fellows engage in peer teaching observation and discussion.

⁹ In Literature of Humanities, there is a common final exam which is designed by a committee and voted on by the entire teaching staff, including Preceptors.

The Teaching Scholars Program allows advanced graduate students to teach a course of their own design to undergraduates in their junior or senior years. Typically classes are designed based on the Fellow's dissertation topic. Fellows work with faculty to develop a syllabus and set of requirements, and are observed by faculty members at least twice in the course of a semester. The supervising faculty member is usually the student's dissertation sponsor. Departments review applications for Teaching Scholars and forward selections to the GSAS, which presents the courses to the Committee on Instruction for approval. Only students who have completed all M. Phil. requirements may apply to be a Teaching Scholar.

Course Assistants

As noted above, Course Assistants are not Student Officers. Rather, they are students paid on the student casual payroll for assisting faculty with administering classes. They perform clerical tasks, such as printing and collecting homework, proctoring exams, answering student questions, and sometimes grading. There is no record evidence about typical pay rates for Course Assistants.

2. Research Officers

Research Officers are typically appointed for one full year as Graduate Research Assistants (GRAs), GRA Fellows, Research Fellows, or Departmental Research Assistants (DRAs). They may be reappointed annually after their first year until they complete their dissertation. The different titles given to Research Officers derive from differences in the source of the stipends paid to each. All doctoral students who are Research Officers are working on research leading to their dissertations. At the same time, research performed on grant-funded projects, must be within the scope of the grant.

Graduate Research Assistants (GRAs)

GRAs are full-time graduate students, usually in the Natural Sciences, who participate in externally funded research related to their studies. The funding for the stipend for these students is provided, in whole or part, by the funder of the grant on which they are working.

Outside grants are awarded by government agencies and private institutions based on faculty applications. The faculty member tasked with fulfilling the terms of a grant is the Principal Investigator, or PI. Grant applications include descriptions of the work to be performed by every person involved in the project, as well as a budget for compensating all involved, including graduate students. As a condition of giving the money, grant funders require that the work done by the GRA be in fulfillment of the grant requirements. Columbia University requires that the GRA's work on a grant must both fulfill conditions of the research project and allow the student to define and carry out a research project that will result in work that can be presented for defense as a dissertation. GRAs sometimes publish research that they do en route to their dissertation, and may be named on publications credited to their working group as a whole.

GRA Fellows or Research Fellows

A limited number of doctoral students, mostly in Natural Sciences and Social Sciences, receive appointments as GRA Fellows or Research Fellows. These students assist faculty members with research projects for an average of 15 to 20 hours per week. While it is not clear that these students are assisting with projects directly involving their dissertations, Employer witnesses explained that, as a general principle, when students are working on their dissertations, everything they do should be related to that.

Departmental Research Assistants (DRAs)

DRA appointments are only for Master's students who assist faculty with research. A typical DRA appointment is for one or two semesters. DRAs provide research assistance to a department or school.

F. Sources of Funding for the Petitioned-For Classifications

As noted above, GRAs are compensated out of income from an external grant which has been awarded to the University for a project overseen by a lead faculty member. Other students performing research, and those in instructional positions, are funded out of various University budgets. In general, individual schools develop a budget each year with the assistance of the Executive VP for Finance. The school budgets must ultimately be approved by the Board of Trustees. It is not clear whether the money for instructional positions and non-grant-funded researchers is drawn from budgets of schools or departments, though there does seem to be some central determination of the numbers of student positions which can be funded in each department, at least within the Arts and Sciences.

The University has several streams of revenue. These include tuition, investments, and endowment money. Grants and intellectual property licenses provide additional income.

Government Grants and Contracts. Most of these are with federal agencies including the National Institutes of Health, the National Science Foundation, the Department of Defense, and others. Grant awards include "indirect cost recovery" funds which are paid to the University to cover overhead expenses and can be used to sponsor future research. When a GRA is paid for work performed on campus on a grant, the grant award includes additional "indirect costs" funding of 60% of the direct costs payable to the GRA. The indirect costs amount to 26% of the GRA costs for work performed out of the country. Financial benefits of outside grants inure to the Graduate School, which is relieved of providing the financial support to students from its own budgets. Income from grants is paid to the University and then allocated to departments.

Training grants. Some schools, primarily in the Medical Center (discussed separately below), obtain funding from the National Institute of Health and the National Institute of Mental Health which is specifically designated for training doctoral students and post-docs. Students on training grants are not given appointments.

Intellectual property licenses. The University owns intellectual property, such as patents, which result from research grants that have been awarded to the University. This includes intellectual property developed by any University Officer working on the grant, including Student Officers. It appears that GRAs and GRA Research Fellows may work on projects that could lead to patents. By contrast, DRAs and Research Fellows are unlikely to work on such projects.

G. The frequency and duration of student appointments to the petitioned-for classifications

The Employer presented an analysis of the number of terms students were enrolled, compared to the number of terms they held appointments, for all students who completed their degree programs during the 2012-13 and 2013-14 academic years and the fall term of 2014-15.

The analysis found that the 854 students who received doctoral degrees from fall 2012 through fall 2014 were enrolled for an average of 16.14 terms each, and received appointments for an average of 9.19 terms. The 2,426 students who received Master's or "first professional" degrees were enrolled for an average of 4.56 terms and held appointments, on average, during 1.88 terms. The 341 students who received undergraduate degrees were enrolled for an average of 8.13 terms and received appointments during an average of 2.37 terms.

The Employer provided a second analysis in which the number of Student Officer appointments for the Fall of 2014 are shown broken down by school and department. This shows that in the Fall of 2014 there were a total of 2,094 appointments of students at various levels to positions as Instructional Officers. Of these, 51 were Preceptors, 811 were Teaching Assistants, 234 were TAIIs, 785 were Teaching Fellows, and 213 were Readers. There were 1059 students appointed as Research Officers, of whom 720 were GRAs, 103 GRA Fellows, 37 Research Fellows, and 199 DRAs. There is no overall data in the record regarding numbers of Course Assistants. The number and type of appointments vary tremendously between schools and departments.

The final document reflecting numbers of students in positions included in the petitioned-for unit covers student positions at the School of International Public Affairs (SIPA). This chart shows the number of students in each position at SIPA during the academic years 2013-2014 and 2014-2015, as well as the numbers and percentages of students in each position who held the position for one term only or two terms. The majority of Teaching Assistants are shown to have served in the position for only one term, while there is an almost even split between DRAs who worked one or two terms. Almost all Readers at SIPA served for one term only. There are no similar documents in the record providing this level of multi-year information about student positions in other schools.

II. EVIDENCE SPECIFIC TO PARTICULAR SCHOOLS OR DEPARTMENTS

A. Arts and Sciences Departments

1. The Mathematics Department

The Mathematics Department offers a PhD, an MA in Finance, and an undergraduate major. There are currently about 200 undergraduate math majors, 100 Master's of Finance students, and 60 PhD students in the department. Most doctoral students receive their degrees in five years; the MA in Finance usually takes three semesters.

Both undergraduate Teaching Assistant IIIs and first-year doctoral students assist in the Math Help Room, where undergraduates can drop in for assistance any time during regular working hours. There is no distinction between the work done there by PhD candidates and TA IIIs. First-year math doctoral students do not have any teaching responsibilities other than Help Room hours.

After their first year, doctoral students continue to assist in the help room for an hour or two per week, and additionally are appointed as Teaching Fellows either in introductory Calculus or Algebra or in the capstone seminar for undergraduate math majors. Each of these classes has many sections taught by many different teachers. The Teaching Fellows' responsibilities increase over time from assisting faculty in classrooms to serving as the instructor of record in their own class. Their duties include grading homework, making and grading exams, and holding office hours for students in their section, which is limited in enrollment to 30 students. They meet a few times each semester with their course leader or the Calculus Director, and are also observed by these faculty members in the classroom. Teaching Fellows work a maximum of ten hours per week in the position.

Fewer than ten students in the Master's of Finance program are appointed to instructional positions each semester. They serve as Teaching Assistants responsible for grading homework in a course they have already taken. They receive \$1,800 per semester and a tuition rebate of \$1,800. Appointments are for one or two semesters; they are rarely granted until after a student's first semester, and are reserved for full-time students.

Many undergraduates in Math receive appointments as Teaching Assistant IIIs. The Director of Undergraduate Studies makes the selections based on grades and input from instructors regarding the student's abilities. Students must have taken the class in which they are assisting. The position entails grading homework and spending two hours per week in the Math Help Room.

There are few or no Graduate Research Assistants in the Math Department. However, math doctoral students do engage in research, and a few receive grant money, usually from the National Science Foundation. Some international students are supported by grants from their governments.

2. The Physics Department

The Physics Department offers a major for undergraduates, a Master's degree in the Philosophical Foundations of Physics (offered jointly with the Philosophy department), and a PhD program. Doctoral students may also earn a terminal Master's degree while studying for a PhD.

There are approximately 32 full-time faculty members in the Physics department. Twenty undergraduates are majoring in physics and another six are taking a physics "concentration." There are just under 100 doctoral students, most of whom receive their PhD in five or six years.

Doctoral students are appointed to Teaching Fellowships during their first two years. A typical Teaching Fellow spends three hours per week teaching a lab section, three hours grading lab reports, one hour in preparation, one hour staffing the Physics Help Room, and 14 hours in the semester proctoring and grading examinations. Professors provide guidelines to the Teaching Fellows for grading. There is also a weekly meeting for Teaching Fellows to discuss upcoming experiments and to ensure the lead instructor's lectures are in synch with lab work.

Preceptors oversee teaching responsibilities of Teaching Fellows, including making grader, proctor, and Help Room assignments for the Fellows. The record does not indicate whether the Preceptors are also engaged in Teaching Fellow duties.

After their second year, students are appointed as Graduate Research Assistants, funded by grants. These positions involve working in a lab with a research group comprised of full-time faculty, post-docs, and other graduate students. The work in research groups is preparation for thesis work, and can include building electronics, calibrating instruments, and working on theoretical problems. Students work in such groups for three or four years. GRAs typically work sixty to seventy hours per week, but there is tremendous variation. Grant work is "one and the same" as dissertation work for physics GRAs.

During their last year, Physics doctoral students write a thesis of between 100 and 300 pages. The program culminates in a thesis defense before a panel of faculty members from Columbia University and other institutions.

Terminal Master's students do not receive instructional or research appointments in the Physics department.

3. Department of Art History and Archeology

The Department of Art History and Archeology offers an undergraduate major, two Master's degrees, and a PhD in Art History. The doctoral program trains graduates to be academics and curators at museums. It usually takes six or seven years to complete. About 15 students are admitted each year.

Doctoral students have no teaching responsibilities in their first year. In their second year they typically assist a faculty member with a large lecture course by grading seminar papers, assignments, mid-terms and final exams. Sometimes their duties include taking a group to a museum or on another excursion. It is not clear whether in this capacity the students are appointed as Readers or Teaching Assistants or Fellows. There is no standard time commitment for these positions, but generally they require more work at exam time.

Often third-year students will work as Teaching Assistants with slightly more responsibility than second-year students. They may lead their own small discussion sections of large lecture classes.

Fourth-year students teach small sections of the Core Curriculum Art Humanities course. More than 700 undergraduates take this course each semester; the department runs 40 sections of the course. The instructional roster includes between two and five regular faculty members, eight and twelve graduate students, twelve or thirteen post-doctoral fellows, and a few adjuncts.

Art Humanities is a review of Western art masterpieces. Every section utilizes the same master syllabus. It is taught using the Socratic method, with between 17 and 21 students in a class. While the first four sessions of the course cover proscribed topics in a set order, in later sessions section leaders customize the master syllabus to reflect their own interests and specializations. The faculty members in each subject area give weekly briefings to the Teaching Assistants throughout their first semester teaching the course, reviewing both the subject matter and how to teach it. Beyond the first semester, students report back in meetings with veteran art humanities instructors once every two months to discuss their classroom experiences.

Beyond their fifth year of study, students may receive instructional appointments, but opportunities are not guaranteed. Students may also receive support via an external dissertation fellowship. These are offered by museums, government agencies, and private entities.

The terminal Master's program in Art History and Archaeology is a two-year tuition-driven program. Students are not usually provided fellowships or other appointments, though a few may serve as Readers for one or two semesters in their second year. Readers are paid a fixed salary of \$5,000.

4. Department of Germanic Languages and Literature

The Department of Germanic Languages and Literature offers doctorates and terminal Master's degrees in German and Yiddish. Faculty also teaches classes in Dutch, Swedish, and Finnish languages and literature. These may all be taken by undergraduates in fulfillment of their Core Curriculum language requirement, but an undergraduate major is only offered in German. There are eight faculty members in the department, one junior lecturer, and a few adjuncts. The entire PhD process usually takes six to seven years.

Doctoral students are appointed as Teaching Fellows over three years, starting in their second year. They are oriented to teaching before their instructional duties begin and they take a weekly graduate pedagogy seminar during their first teaching semester. After the fifth year, they typically obtain research support from an outside agency – such funding is provided to the

individual student, not to the school. Some graduate students work on project-related research for professors in the department. These positions are paid by the hour out of research funds available to each professor; they are not appointed positions.

Typically, Teaching Fellows start out teaching elementary German, followed by intermediate German, and then an advanced German conversation class. They create lesson plans for their classes and teach independently, though they are observed by the department chair. Between two and five classes are taught each semester by Fellows. Depending on the number of Teaching Fellows and the number of elementary German classes offered, it is possible for all of those classes to be taught by doctoral students. The Yiddish program averages one graduate student per year; sometimes these students teach less than their German counterparts owing to low enrollment levels for Yiddish classes.

The other language departments in the Graduate School of Arts and Science operate similarly to this one. They are: East Asian Languages and Literatures, Middle Eastern and African Languages and Cultures, Slavic Languages and Literature, Latin American and Iberian Culture, Romance Languages and Philology, Italian, Classics, and Hellenic Studies.

B. Columbia University School of the Arts

The Columbia University School of the Arts is a graduate professional school offering Masters of Fine Arts (MFA) degrees in four disciplines: Film Studies, Theater, Creative Writing, and Visual Arts. The MFA is the terminal degree for scholarly disciplines in the arts, leading to teaching and other professional opportunities. The department also offers a Master of Arts degree in Film Studies and Bachelors of Arts in Film Studies, Creative Writing, and Visual Arts. There are between 750 and 800 MFA students enrolled in the School of the Arts.¹⁰ There are 70 full-time faculty members.

A typical MFA student is a practicing artist when entering the program; samples of art or writing are submitted as part of the application. Progression through an MFA program varies by division and tuition rates are different depending on whether students are taking classes or in the “research arts” phase of their program.

In the Visual Arts, students complete the MFA in two years, including course work, a tutorial, and a thesis presentation in a professional exhibition. Theater MFA students have two years of coursework followed by one year spent developing a thesis performance or production. The Writing program takes students two or three years, culminating in a thesis consisting of a narrative work or a substantial collection of poems. The longest MFA program is in Film. Students study to be a screenwriter, director, creative producer, or writer/producer. Typically they have two years of coursework followed by a third, and often a fourth, year to produce a film, which is presented publicly at the Columbia University Film Festival. After graduation MFA students pursue careers in teaching or film production.

¹⁰ Twenty students are enrolled in the seven-year Ph.D. in Theater program, which includes classes taught by School of the Arts Faculty, but is administered by the English and Comparative Literature Department in the GSAS.

The School of the Arts also offers a terminal MA in Film Studies, which prepares students either to continue to a PhD program or enter the workforce curating film festivals or writing criticism. This is a three-semester program, with class work for the first two semesters followed by a pro seminar and thesis work. Between fifteen and seventeen students are admitted each year for the MA program.

Student Assistant Positions at the School of the Arts

Teaching Assistants

All students in the School of the Arts are offered one Teaching Assistant position per academic year. Usually students serve as Teaching Assistants in the second semester of their first year and the first semester of their second year. They serve within a discipline that they are studying. Teaching Assistants in all four divisions of the School of the Arts get the same financial support package -- a tuition scholarship of \$4,300 and a stipend of \$2,616. The stipends are paid as salary for payroll purposes and are only paid in semesters when the student is serving as a Teaching Assistant. Specific descriptions of Teaching Assistant positions in the different departments are below.

Teaching Assistants in Film

Faculty select between twenty-five and thirty film students for Teaching Assistant appointments, usually for one semester, during the students' second or third year. Teaching Assistants in film assist faculty teaching larger lectures and seminars in film history, theory, and criticism. They lead discussion sections under the supervision of a faculty member, typically following screenings and lectures, and work with faculty members to develop a syllabus and design course content. They learn how to construct a course and how to lead discussion sections in small groups. Teaching Assistants may help prepare film clips, help prepare for a lecture and sometimes may present a lecture themselves. They are not directly involved in giving final grades but their notes about participation or attendance may be considered by faculty in assigning grades.

Visual Arts Teaching Assistants

Fifty-four graduate students are appointed as Teaching Assistants each semester in Visual Arts. They assist in studio classes in their discipline, critiquing and helping students to develop skills while further developing their own skills. The studio classes where they are assigned are typically six hours long, with one faculty member and between fifteen and twenty students.

Preceptors in Film

The School of the Arts Film Division offers Preceptor positions in the research arts for third, fourth, or fifth year students who have finished their coursework and are in their "research arts" year. Of the 250 students in the MFA in Film Studies program, ten or eleven are appointed

each semester as Preceptors. Preceptors lead a lab for undergraduate seniors in screenwriting or filmmaking. They are selected and supervised by the Director of Undergraduate studies. Preceptors prepare a syllabus for the supervisor to review and meet frequently with him or her to discuss their class. Typically preceptors are appointed for one semester. They have the same financial support as Teaching Assistants.

Teaching Fellowship in Creative Writing

About seven third-year MFA students are selected each semester for a one-semester creative writing Teaching Fellowship. They teach their own beginning writing workshop class to undergraduates majoring in creative writing. These Teaching Fellows are selected by the Director of Undergraduate Studies and the concentration heads in each of the three disciplines (fiction, non-fiction, and poetry). They develop a syllabus, select reading texts, and create lesson plans, which are reviewed by either the head of the concentration or the Director of Undergraduate Studies or both. The financial aid package for these Teaching Fellows is better than that for Teaching Assistants. The total compensation is \$10,000, of which \$5,000 is described in the Student Handbook as an “adjunct salary” and \$5,000 is described either as a fellowship or a scholarship.

Teaching Fellowship in the Undergraduate Writing Program

More than thirty MFA students, usually from the Writing Division, are selected each year to teach in the research-writing class which is part of the Core Curriculum, overseen by the GSAS. The GSAS faculty select, train and supervise graduate students teaching in that program, who are tasked with critiquing students’ writing. The program provides these Fellows with a scholarship amount which partly covers tuition. These Teaching Fellows are appointed for two years. Because of the extensive training and teaching responsibilities, they usually take a reduced course load during this Fellowship.

Other Paid Positions for Students in the School of the Visual Arts

The Visual Arts MFA Handbook describes hourly work available to students as “Student Fellows (previously called DRA’s),” or in “Work Positions.” These are typically year-long positions working in one area for the Visual Arts program. Student Fellows are paid \$25 per hour via a payroll account. The positions require between ten and twenty hours per week. Most students are appointed at the end of their first fall semester for the following two semesters.

Other service positions in the School of Visual Arts are filled one semester at a time and involve a six-hour commitment each week. Students may work in service jobs for more than one semester. They pay between \$20 and \$25 per hour based on level of responsibility. Assignments involve a wide variety of tasks, including assisting with research, helping a faculty member to develop a symposium, monitoring and maintaining technical facilities or equipment, or photo processing. Funds for these positions come from the casual payroll budget.

C. Fu Foundation School of Engineering and Applied Science

The School of Engineering and Applied Science (SEAS) offers an undergraduate degree program, a master's degree program, a PhD program, and a small Doctor of Engineering Science program for professionals doing collaborative research with outside companies and the University. There are about 1600 undergraduate students, 2000 Master of Science students, and just under 800 doctoral students. The PhD program graduates around 120 students each year. There are 175 full-time faculty in the School.

Applicants submit transcripts, letters of recommendations, a personal statement and standardized test scores. Admission is based on outstanding academic background and mastery of the subject; prior teaching experience is not considered. Applicants specify intended areas of research and faculty with whom they wish to work. They are admitted specifically to one of the nine departments within the school.

The Doctoral Program

Doctoral candidates begin their program with one or two years of course work depending on whether or not they already have a Master's degree. There is a qualifying exam at the close of the first year, prior to the research phase of the program, in which students conduct research in collaboration with a faculty member, develop research and writing skills needed for publishing papers and presenting research at conferences. Students progress to proposing a thesis topic, which they defend before a committee of faculty members. Once approved, the thesis topic becomes the subject of the student's dissertation.

The University typically funds Engineering School students for a minimum of four years, and sometimes beyond into a fifth or sixth year, contingent on the student's academic standing. Funding includes full tuition of \$20,500 per semester in addition to a monthly stipend of about \$2,800, medical coverage, and a partial payment of the facilities fee. Admission letters include offers of stipends and other financial support and indicate that students will have teaching and/or research responsibilities. The details of financial support and teaching and research responsibilities vary between departments.

There is no uniform application process for students seeking paid positions applicable to the whole Fu School, though most departments ask doctoral students to express where they would like to serve. Teaching Assistants are selected based on familiarity with the material.

Student Instructional Positions in Engineering

Engineering School students typically serve as Teaching Assistants in their first year and later are appointed as research assistants. Students in Computer Science and Biomedical Engineering are required to hold Teaching Assistant positions and those in the other departments are "strongly encouraged" to do so; over 95 percent of PhDs serve as teaching assistants before they graduate. Depending on their department, students may spend one or two semesters or more as a Teaching Assistant.

Teaching Assistants have varied duties, including grading homework, proctoring exams, grading exams, holding office hours, copying, maintaining course grade books, substituting as a

lecturer as needed, holding recitations, running labs, and attending lectures. They spend an average of eight to twelve hours per week on their teaching responsibilities. Assignments of TAs take into consideration the preferences of the instructors and students.

Graders in the Chemical Engineering department primarily grade homework assignments, working roughly 10 hours per week. Applicants are matched with instructors as needs arise.

Laboratory Assistants in the Electrical Engineering Department help undergraduates with lab experiments assigned in classes and with grading. The record is unclear as to whether these are appointed positions; they may be categorized as casual employees for payroll purposes.

Student Researchers in Engineering

During the research period of their studies, students are appointed to GRA or DRA positions. As in other schools and departments, GRAs are funded from government grants and DRAs from University funds. Students have the same relationship with their faculty advisor regardless of the source of the funds for their research. Some students also receive external fellowships.

Assistant Positions held by Master's Students and Undergraduates

The master's program in Engineering typically takes three semesters to complete. About 1100 students are admitted each year. These students do not receive any stipend or other funding upon admission. However, they may serve as Course Assistants and Graders for one or two semesters. Course Assistants typically work between eight and fifteen hours per week. Undergraduates may serve in these same positions. Course Assistants and graders are on the casual payroll. They are paid between \$1,800 and \$2,500 per semester.

Undergraduates in the School of Computer Science who have performed extremely well in programming courses may serve as Teaching Assistant IIIs. They are trained by faculty to perform similarly to graduate teaching assistants and may serve multiple semesters as Teaching Assistant IIIs. They spend eight to fifteen hours per week in their instructional position. They receive a stipend but the amount is not clear from the record.

Record evidence is unclear as to the number of Teaching Assistant IIIs and Course Assistants in the Engineering School. Some record evidence indicates that there are 79 Teaching Assistant IIIs, but testimony from the Dean of the School indicates that there are actually fewer than 30, and that some Course Assistants were mis-coded as Teaching Assistant IIIs. Likewise, while some record evidence indicates that there are 115 Readers at the School, this is apparently incorrect and reflects a number of students who do grading and assisting in classes and are paid on an hourly basis from a "casual" payroll account. Apparently some Course Assistants fill out time sheets and others are paid a stipend based on assumed hours.

D. School of International Public Affairs (SIPA)

The School of International Public Affairs is a professional school which offers a Master's of International Affairs and a Masters of Public Administration, each of which are two-

year programs. Students can also study for a PhD in Sustainable Development at SIPA, though that program is administered by the GSAS. There are 1,100 students currently enrolled and approximately 70 full-time faculty members. About 40% of students in SIPA go into the private sector after graduation, a third into the public sector and the remainder into Non-Profits and NGOs.

Tuition at SIPA is \$48,954 for one year. The school offers merit-based scholarships and second-year students are eligible for assistantships. Master's students may receive need-based funds during their first year based on availability. Doctoral students receive the same scholarship support as other doctoral students within the GSAS.

Second-year students may apply for positions as Teaching Assistants, Readers, Research Assistants, or Program Assistants. Selection is based on academic and professional credentials, and appointments may be for one or two semesters. Instructional Assistants, which include Teaching Assistants, Departmental Research Assistants, and Readers, are appointed as Student Officers, while Program Assistants are student "casual" appointments. It appears that Program Assistants, alone among the positions, are required to submit time sheets.

Students rank preferences when applying for positions; the applications are then reviewed by the appropriate faculty or administrative officials. Faculty select students for instructional appointments, while administrative offices select for Program Assistant Positions. In the last academic year, there were 82 Teaching Assistants, 34 Readers, and 121 DRAs. There were 103 Program Assistants. The vast majority of instructional assistants are appointed for one semester. Most administrative appointments are for two semesters.

Teaching Assistants are assigned by the Office of Student Affairs to large core courses; they perform duties similar to Teaching Assistants in other schools at Columbia University. The time commitment is 20 hours per week. TAs receive a tuition credit of \$15,000 and a salary of \$5,000 each semester.

Readers help an instructor prepare course materials and with administrative tasks. The position requires 5 hours per week, and entails a tuition credit of \$4,700 and a salary of \$1,300 each semester.

Department Research Assistants may work in quantitative courses or in administrative offices. Those working in courses grade weekly assignments and exams, maintain student records, and hold office hours. Those in administrative offices assist directors of programs with course management, student communications, event planning, and related duties. DRA positions require 15 hours per week. DRAs receive a tuition credit of \$8,100 and a salary of \$2,400 each semester.

Program Assistants perform clerical tasks in various administrative offices including the financial aid, student affairs, and IT offices. They spend 15 hours per week in the position, and receive tuition credit of \$8,100 and a salary of \$2,400 each semester.

E. Columbia University Medical Center

There are approximately 300 Ph.D. students enrolled in nine Ph.D. programs offered at the Columbia University Medical Center, and fifty or sixty students in combined M.D./Ph.D. programs there. Graduate programs at the Medical Center are administratively part of the Graduate School of Arts and Sciences, but operate with greater independence than other divisions of that School. The Office of Graduate Affairs at the Medical Center is responsible for admissions and administration, with reporting lines to both the GSAS and the Vice President for Research at the Medical Center.

The mission of the Ph.D. programs at the Medical Center is to train doctoral students in basic research related to biology and human disease. Students typically enter doctoral programs with undergraduate degrees in Chemistry, Biochemistry or Biology and after graduation take positions as professors, researchers in pharmaceutical or biotech companies, or science policy analysts.

First-year doctoral students take classes and rotate through laboratories in preparation for choosing one in which to perform their doctoral work. In the second year, students take a qualifying exam and present their doctoral research plans to a committee for approval. Thereafter, they work full-time on their research projects, with mentoring by a sponsoring faculty member who ensures their timely progress toward their degree. The doctoral program culminates with a written dissertation. Students usually receive their Ph.D.s in five and a half years.

Doctoral students at the Medical Center receive a financial package covering their entire graduate career, consisting of a stipend, health insurance, fees and tuition. The stipend amount in 2014 was \$34,088 per year. Students serve as Graduate Research Assistants or as Pre-Doctoral Fellows. It is not clear whether the Pre-Doctoral Fellow position is an appointment. Usually students are initially funded as Pre-Doctoral Fellows and transition to positions as Graduate Research Assistants after their first year and thereafter until they complete their program.

As with research grants elsewhere in the Graduate School of Arts and Sciences, grants funding research at the Medical Center include line items for Graduate Research Assistants. Funds for Pre-Doctoral Fellows come from various sources, including Dean's funds from the Graduate Office, training grants, and departmental funds. Where funds allotted by outside grants of whatever sort fall short of the annual stipends, the School makes up the difference between the grant funds and the stipend amount to ensure the student is fully-funded.

Research Grants

Faculty choose students to work in labs based on their assessment of whether the student has talents and interests that fit the needs of the lab. Graduate Research Assistants perform the same day-to-day functions as any other student in a lab – their status as GRAs does not distinguish their activities from students on outside fellowships or training grants. The total amounts of the stipend provided to each student, regardless of their classification, is identical. Likewise, post-Docs and technicians can essentially perform the same work as graduate students on a grant, though sometimes a faculty member will assign a post-Doc rather than a graduate student to work which is unlikely to serve a training purpose. NIH regulations require that

compensation of a first-year graduate student be the same as a first-year post-Doc. Students who are still rotating between labs sometimes contribute to the work of a particular lab, but typically more significant contributions are made by Graduate Research Assistants.

Training Grants

Training grants are awarded by government agencies to train students in particular sub-specialties that are deemed important by those agencies. Groups of faculty with related interests, sometimes from multiple departments, choose a Program Director (the equivalent of a Principal Investigator) and submit grant applications that include descriptions of training programs which have curricular elements, such as additional coursework and activities outside the requirements of a particular academic program.

Students receive training grant positions after a nomination and selection process, after admission to a doctoral program. Training grants support students for between one and three years. They generally provide less money than the full stipend amount, so are supplemented by funds from the Dean's office to ensure the students receive the full stipend amount. Students can and do receive funds simultaneously from research grants and training grants.

Students are chosen for work in labs based on their skills and interests. Although a particular student may have funding from a training grant, thus relieving the lab of supporting her with a research grant or other funds, such funding does not generally play into whether a student is chosen or not to work in a lab.

F. Student Testimony about Assistant Positions

Elliott Cairns, a fifth-year doctoral student in the Department of Music, began teaching in the second year of his program, in the fall of 2011. He was appointed as a Teaching Assistant for Music Humanities – the Core Curriculum class in music appreciation. In that position Cairns was assisting a senior doctoral student, who was the Instructor of the section. Cairns testified that he was not observed during his first semester as a Teaching Assistant.

When Cairns was serving his second semester as a Teaching Assistant, the professor he was assisting went out on medical leave. The professor asked Cairns to take over the class, which he did. From the mid-semester point, Cairns assumed all teaching, grading, and office hours responsibilities for the class of 26 or 27 students. His compensation did not change in any way.

During Cairns's third and fourth years, he was appointed to the position of Music Humanities Instructor. As an Instructor, he had all grading and teaching responsibilities. Unlike other Core Classes, Music Humanities does not have a set syllabus, so Instructors have to develop their own, including choice of textbook, if any, and scheduling the progression of topics. Instructors are eligible to have a Teaching Assistant but Cairns did not have one. He was observed in this role by the Chair of Music Humanities. The Chair also observes adjuncts in their first year.

Cairns is writing his dissertation on sound recording technologies, which is not a topic traditionally covered in Music Humanities. He testified that while he was interested in teaching, the amount of teaching he is required to do for his stipend takes time from his work on his dissertation, which he described as his primary focus as a graduate student.

Longxi Zhao is a Ph.D. student in the Chemical Engineering Program at the Fu Foundation Engineering School. He received his Master's Degree from Columbia University in the spring of 2015. He did not have any teaching or research appointments during his time as a master's student.

When Zhao became a doctoral student, he was appointed as one of two Teaching Assistants for an undergraduate class taught by Professor Banta. The class consisted of a weekly lecture and a second weekly meeting to review the prior week's homework. Students were assigned an extended problem each week to work on with the help of the Teaching Assistants. Teaching Assistants graded homework and mid-terms, proctored and graded quizzes, held office hours, and performed copying tasks.

Shortly after becoming a Teaching Assistant, Zhao asked Professor Banta whether he could have vacation time to travel to China over Spring Break. There is a dispute about whether Zhao received the appropriate permission. Zhao took the trip, which commenced one day before the start of Spring Break. Upon his return, he received a letter from the Chair of the Department of Chemical Engineering advising him that he was terminated from his Teaching Assistant position, citing four reasons, including failing to proctor a quiz scheduled for the day he left on his trip, taking vacation during the semester without approval, his having made decisions about homework submission rules without the approval of his course instructor, and his having sent inappropriate email correspondence to students (he had used the f-word casually in an email).

Zhao disputes the reasons listed in the letter as falsely accusing him of abrogation of duties and lacking critical context. He appealed the termination decision through a hearing but it was upheld by the Dean of Graduate Student Affairs at the Engineering School. As a result of his loss of the Teaching Assistant position, Zhao lost his stipend of \$7,000. However, he was still granted full tuition and fees for the semester and he remains enrolled as a student. The termination letter notes that a, "teaching assistant position, although a useful funding source, is not a requirement for the doctoral degree." Zhao was also issued an academic warning for using inappropriate language in an email, but it does not appear that the termination from his Teaching Assistant position per se caused the academic warning.

III. ANALYSIS

A. Brown University is controlling

In *Brown University*, 342 NLRB 483 (2004), the Board held that graduate students performing work related to their studies at an educational institution at which they are enrolled as students are not "employees" under Section 2(3) of the Act. The Board majority in *Brown* reasoned that the graduate student assistants have a predominantly academic, rather than economic, relationship with their school. The Petitioner submits that the current Board's remand

to me of the instant petition and that in *The New School*, Case No. 02-RC-143009 signals a disinclination to follow *Brown*, and that this combined with its arguments about Brown being inconsistent with statutory language and other precedent suffice to support a finding by me that graduate assistants are employees. I do not agree. To date, *Brown* remains controlling on the issue of graduate assistants as employees and I am compelled to follow that precedent.

1. *Brown* policy-related factors at Columbia University

The record demonstrates that the duties of graduate assistants at Columbia University, and the framework for financial compensation to them, are in large part equivalent to those of the unit at issue in *Brown*. No argument has been put forward that this case is broadly distinguishable from that one. Rather, the Employer argues the merits of the *Brown* decision and its controlling status, while the Petitioner argues that *Brown* should be overturned. The Employer notes accurately that just like the students at issue in *Brown*, students at Columbia University must be enrolled there in order to serve in any of positions included in the petitioned-for unit. All doctoral students are offered the same financial package upon admission, with the same research and/or instructional service requirements as others in their program, and the amount of financial support for students without assistant positions (i.e. in their first year or “dissertation year”) is the same as for those students holding these positions. The Petitioner urges that *Brown* should be overturned based on what it argues are fundamental flaws in the decision itself as well as the post-*Brown* history of collective-bargaining in university settings, which Petitioner argues demonstrates fallacies in the *Brown* majority’s analysis.

The *Brown* decision was premised largely on the Board’s finding that the graduate student assistants were performing tasks which were part and parcel of their status as students at Brown. The Board in *Brown* distinguished this activity from that of individuals laboring for economic rewards. The Board found that the graduate students’ role as students by its nature controlled their relationship with their school in such a manner that they could not also be considered employees under the Act. Because this policy determination was so central to the holding in *Brown*, there was a significant amount of testimony in the instant case about the witnesses’ perception of the academic and other non-monetary benefits to students in the petitioned-for classifications.

Graduate Student Assistants as “students”

Columbia University’s witnesses stressed the educational benefits of instructional and research service positions. Instructional assistant positions deepen the students’ knowledge of material by teaching it to others, and many programs include instructional experience among the requirements for a doctoral degree. The experience is also an important qualification in the academic job market many of the students will face upon completion of their degree programs. Research performed by students in petitioned-for research classifications was presented as mostly, if not entirely, in the service of the students’ own academic advancement. In many cases it is indistinguishable from the research underpinning doctoral dissertations or equivalent final projects.

Graduate Student Assistants as “employees”

In many respects the duties of student assistants are the same as those of admittedly “employee” counterparts on the Columbia University faculty. Teaching Fellows are considered “Instructors of Record” in some classes and the experience of undergraduates in their classes is equivalent to that of students in the same class when led by a senior faculty member. In other respects teaching assistants relieve faculty of tasks, such as grading, proctoring, and administrative work, that would otherwise fall within their job duties in their capacity as paid employees. In labs, research assistants work side by side with faculty and post-Docs, performing many of the same tasks and advancing the work of the lab and the mission of the University as a top research institution. To a small degree, graduate student researchers also contribute to the financial coffers of the University by performing services on grants which award “indirect costs” as well as direct compensation for the services. Testimonial as well as documentary evidence shows payments to students are sometimes described and treated administratively as salaries, and the assistant positions are called, “jobs.” Doctoral student Cairns testified that he viewed his teaching duties primarily as fulfillment of his obligations in return for the stipend support he is receiving.

As part of its argument that traditional economic conditions between employers and employees are not relevant to the “hiring” or compensation scheme pertaining to the graduate student instructors, the Employer offered a cost analysis purporting to show that the University spends far more for graduate students serving in instructional positions than it spends to hire adjunct instructors. The Employer’s analysis contrasted the \$5,000 in salary and \$1,625 worth of fringe benefits paid to an adjunct (for a total of \$6,625 per class) with compensation to graduate student teachers amounting to \$14,798 for one semester (half of the \$29,596 per academic year stipend/salary of \$25,336, health fees and insurance of \$3,392, and facilities fee of \$868). The choice of using the total payments to students – as opposed to a subset which might consist only of the stipend amount or the portion paid as “payroll,” for instance, may overstate the financial differences in “cost” to the University. There is no contention that all aid provided to instructional assistants is in compensation for instructional duties.

B. Miscellaneous Unit Issues

Having found that the students included the petitioned-for unit are not employees, based on the holding in *Brown*, I am dismissing this petition. However, the Employer contends that even if the Board finds student assistants are employees, the petitioned-for unit would be inappropriate on other grounds. I discuss these below.

1. The Employer’s Claim that Undergraduate and Master’s Degree students should be excluded because of the temporary or casual nature of their employment.

The Employer argues that because undergraduates and Master’s degree students serving in research and instructional positions generally work fewer terms than doctoral student assistants, they should be excluded from any unit as temporary or casual employees. The evidence is clear in this record that, on average, undergraduates and Master’s Degree

instructional assistants serve in the classifications included in the petitioned-for unit for a far shorter duration than do doctoral students. While doctoral students, on average, are appointed for just over nine semesters, undergraduates are appointed for an average of just over two semesters and Master's and "First Professional" students for an average of just under two semesters. Most undergraduates and Masters students are not eligible to hold these positions until the final year – two semesters – of their programs.

However, during the period these students are serving in the positions, all of them are performing duties identical or nearly identical to doctoral student assistants, often side-by-side with doctoral students. The record includes testimony that to a student's eye, an undergraduate Math Help Room TAIHI is indistinguishable from a doctoral student working in the Help Room. Accordingly, undergraduate and Master's students serving in instructional and research positions may share a community of interest with doctoral candidates because they are all performing essentially the same work. On the other hand, as the Employer emphasizes, it is true that the financial compensation to Master's Degree students and undergraduates in assistant positions differs significantly from that provided to doctoral students.

The Employer cites to *Saga Food Service of California*, 212 NLRB 786 (1974) for the proposition that students employed in positions temporarily are not entitled to collective bargaining rights. That case involved food-service employees at a university cafeteria. The Board excluded the students at issue in *Saga Food Service* based on the, "markedly different treatment" of the students and non-students, "as to many significant aspects of their employment, especially because of their student status." While the Board references the fewer hours worked by students and their temporary status as employees in that case, this factor is a minor one among several considered. The case thus does not support a finding that the Board would divide undergraduate and Master's students from doctoral students based on differences in the time each of these spend in assistant positions.

San Francisco Art Institute, 226 NLRB 1251 (1976) is also unpersuasive on this issue. There too the Board was considering a case involving inclusion of temporary part-time student employees in a unit with permanent full-time non-student employees, not whether students are properly excluded from a unit of other students based on differences in their duration in position. The Board's analysis in *San Francisco Art Institute* was guided significantly by the "critical" factor that the students at issue were working for the educational institution they attended. *Id.* at 1252. Ultimately, of course, this factor became the central issue in *Brown*.

Thus, if student assistants are otherwise found to be employees, the shorter number of terms worked by most undergraduate and Master's students may not suffice to find that they have an insufficient community of interest with the doctoral assistants to be included in the unit.¹¹ A separate issue, not raised by the parties in this case, is whether all student assistants

¹¹ The Employer argues that support for its position may be found in the determinations made by the Regional Director in a 2002 case involving Columbia University graduate assistants ("*Columbia I*," Case No. 02-RC-22358, DDE Feb. 11, 2002, vacated after *Brown* was decided). I note that *Columbia I* was based on evidence of the conditions existing at Columbia University over a decade ago, which is not part of the record in this case. I further note that while the Regional Director in *Columbia I* did exclude from

should be excluded as temporary or casual because none have any expectation of employment in their positions beyond graduation. As the Petitioner argues, the Board has long held that apprentices who attend a school as part of a training program are employees under the Act. *Newport News Shipbuilding and Dry Dock Co.*, 57 NLRB 1053, 1058-59 (1944). This rationale was further extended in *Boston Medical Center*, 330 NLRB 152 (1999).¹²

2. *The Employer's Claim that students on Training Grants should be excluded because they do not share a community of interest with the other graduate assistants.*

Students on training grants do not have appointments of any kind. The Employer argues that they are properly analogized to other students supported by University funds during their studies. It is not clear which students specifically the Employer means to reference, but presumably those on "Dean's Fellowships" or in their dissertation year. The Employer notes that training grant funders specify that stipends for student "trainees" are not to be considered, "salaries" and are not provided as a condition of employment but rather to help defray living expenses.

However, the record indicates that students on training grants, when working in labs, perform the same functions as those appointed to GRA positions. It is possible that there are students supported by training grants who are not performing such functions, but the record does not include evidence of that, and the unit inclusions on the petition appear to seek coverage only of those functioning as Research Assistants, albeit without an appointment to the title. It appears that students performing work in a laboratory or instructional work who are supported by training grants are not appointed to GRA positions simply because they do not have need of the funding those positions provide. Thus while "training grant recipient" may not be a classification appropriately included in a unit of graduate student assistants, those who are performing research or instructional tasks equivalent to GRAs or other included classifications should not be excluded merely because their funding is sourced from training grants.

In conclusion, I am dismissing the petition on the basis that it seeks an election among students who are not "employees" within the meaning of Section 2(3) of the Act pursuant to *Brown*, for the reasons stated therein.

THEREFORE, based on the foregoing reasons, further proceedings on the petition are not warranted, and

IT IS HEREBY ORDERED that the Notice of Hearing issued herein be revoked and that the petition be dismissed.

the unit certain classifications in certain departments based on students serving in the positions for only one semester, undergraduate assistants were among the positions included in the unit.

¹² I note that in his dissent to the grant of Request for Review in *The New School*, Case 02-RC-143009, Board Member Miscimarra states that that case may not turn on the applicability of *Brown University* to the extent individuals encompassed by the petition may be "casual" or "temporary" employees.

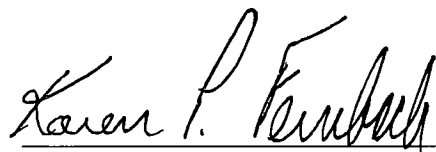
RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 - 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on November 13, 2015 at 5 p.m. (ET), unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E- filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select File Case Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at New York, New York, October 30, 2015


Karen P. Fernbach, Regional Director
National Labor Relations Board, Region 2
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New York, New York 10278